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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,745	09/08/2003	Paul Beltran	BELTRAN01	1136

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EXAMINER
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WOOD, KIMBERLY T

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/657,745

Applicant(s)

BELTRAN, PAUL

Examiner

Kimberly T. Wood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 10-15, 22-27 and 32-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 16-21 and 28-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                        |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____   |

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This is an office action for serial number 10/657,745.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 2 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the first plane is substantially parallel to the second plane, does not reasonably provide enablement for the first plane is substantially perpendicular to the second plane. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

***Election/Restrictions***

Claims 10-15, 22-27, and 32-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species (as confirmed in telephone interview of March 2, 2006), there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on February 27, 2006.

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The traversal is based on the grounds that the embodiments are directed to a unitary concept and based on various policy arguments. These arguments are unpersuasive. The arguments set forth by the applicant (i.e., a want of a serious burden on the examiner, or inventions having the same classification) are arguments commonly set forth when traversing a restriction of the invention. (See MPEP 803). However, the examiner is requiring the applicant to elect between several disclosed species. A proper traversal of an election of species includes arguments that the species are not patentable over one another. What's more, if patentably different species are disclosed in the application, "... it is not necessary to show a separate status in the art or separate classification." (See MPEP 808.01(a)). While there is a policy of compact prosecution, the plain language of the rules set forth that an examiner may require an election of species between patentably different species (see MPEP 808.01(a); 37 CFR 1.146). The argument regarding excessive expense is unpersuasive since excessive is a relative concept. Furthermore, as the applicant is aware, a separate fee schedule has been provided for those claiming small-entity status. Finally, there is no policy to reduce the number of patents; in fact, an argument could be made that it is less confusing to have a separate patent for each distinct

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embodiment. Since the applicant has not submitted persuasive arguments that the embodiments are not distinct from one another, the requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the neck, stand, and adjustable mechanical coupling must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the

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filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: (22) neck, (24) stand, and (20) adjustable mechanism. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 16-21, 28-31, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Burrell et al. (Burrell) 3,753,543. Burrell discloses a base (24) having a neck (25) and a stand (26), a retaining section comprising a first section (40) and a second section (42) and a tension mechanism/securing mechanism (46), a brace (10) with adjustable mechanical coupling (38).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art discloses conventional apparatus for transporting a container.

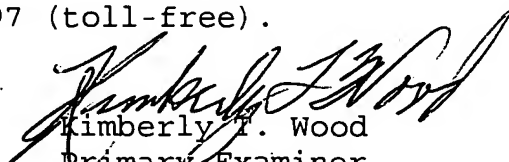
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly

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T. Wood whose telephone number is 571-272-6826. The examiner can normally be reached on Monday-Thursday 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kimberly T. Wood  
Primary Examiner  
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March 13, 2006